

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-223

December 5, 2002

MAINE PUBLIC UTILITIES COMMISSION
Maine Telecommunication Education Access
Fund

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this order we direct our Maine Telecommunications Education Access Fund administrator to transfer \$2.25 million to the Commissioner of Administrative and Financial Services, acting as fiduciary and fiscal agent for the Maine Learning Technology Endowment, as authorized by P.L. 2001, chapter 358 and P.L. 2001, chapter 559 Part LL, and pursuant to our earlier order in this docket dated September 14, 2001.

II. BACKGROUND

During the spring of 2001, the Legislature amended the law creating the Maine Learning Technology Endowment. The new law authorized the Department of Education to proceed with the deployment of laptop computers for public school seventh and eighth graders beginning with school year 2002. Under the law, the learning technology plan for the seventh and eighth grade deployment

requires the utilization of the Maine School and Library Network [MSLN] account, the Telecommunications Education Access Fund [MTEAF] and the federal E-rate program to enable and complement the technology components that are supported by the Maine Learning Technology Endowment. Appropriate policymaking entities shall collaborate to ensure that the overall learning technology infrastructure of the State functions and expands in a coordinated fashion. The Public Utilities Commission shall enter appropriate orders or take appropriate actions to ensure that capacity is developed and expanded to provide external and internal network connections, technical support and toll-free home network access as recommended in the Final Report of the Task Force on the Maine Learning Technology Endowment.

P.L. 2001, chapter 358, Section II-7(4).

In September 2001, the Department of Education, as part of its preparation of a request for proposals, requested that the Commission provide support for these elements in an amount of up to \$2.25 million per year for four years. The Commission

agreed to provide up to \$9 million over four years while retaining the authority to approve specific expenditures. Docket No. 2001-223, Order at 2 (Sept. 14, 2001).

In March 2002, the Legislature passed a law creating a “digital library” and directing the Commission to transfer from the unexpended balance in the MTEAF, \$500,000 no later than June 2002 and \$500,000 no later than June 2003 to the University of Maine System for that purpose. P.L. 2001, chapter 522, Section 4.

In addition, in March 2002, as part of the budget bill, the Legislature further directed that:

Notwithstanding any other provision of law, the Public Utilities Commission shall ensure that, over the 4-year period beginning August 1, 2002, at least \$2,000,000 from the telecommunications education access fund, in addition to funds collected pursuant to the Maine Revised Statutes, Title 35-A, section 7104-B during the period June 1, 2002 through May 31, 2006, are available for purposes other than to support the learning technology plan established pursuant to Public Law 2001, chapter 358, Part II and the digital library at the University of Maine established pursuant to Public Law 2001, chapter 522. Nothing in this section precludes the commission from expending up to \$2,250,000 prior to August 1, 2002 from the Telecommunications Education Access Fund to support the learning technology plan if the provisions of this Part are otherwise satisfied.

P.L. 2001, chapter 559, Section LL.

On October 8, 2002, the Commissioner of Education filed a letter with the Commission requesting \$2.25 million to support the Maine Learning Technology Initiative for fiscal year 2003. On October 16, 2002, the Commission sought comments from interested persons. The Commission received comments from the Public Advocate (OPA), Telephone Association of Maine (TAM), the Maine Library Commission and Library Association and Senator Sharon Treat.

On November 22, 2002, by procedural order, the Commission requested additional information on DOE’s actual expenses for FY 2003. DOE replied on November 27, 2002.

III. DISCUSSION OF COMMENTS AND DECISION

TAM questions whether funding for technical support falls within the items to be supported by MTEAF as described in 35-A MRSA § 7104-B(4). We do not read our authority as narrowly as TAM. The MLTE statute and Task Force Report specifically direct financial support from MTEAF and remaining MSLN funds to be used for technical support, which includes maintenance and replacement of devices, software support for services, and network support including a toll free help desk feature. We believe both

the MTEAF statute and MLTE statute are written broadly enough to encompass the services being provided to DOE.

Senator Treat asked the Commission to require the Department to submit actual eligible expenses for FY 2003, which DOE has since provided. Senator Treat also requested that any approval of funding make specific reference to Chapter 599, Part LL and its goals. The Library Association and Library Commission submitted similar comments and the OPA joined in Senator Treat's comments.¹

As described above, the Legislature has directed the Commission to provide financial support for "external and internal network connections, technical support, and toll-free network access from home." The letter submitted by DOE on November 27, 2002 states how \$2,452,610 in such costs will be expended in 2003 and between \$3.6 million and \$3.9 million will be expended in the subsequent three years. Having reviewed the comments and filings submitted by DOE, we find that \$2.25 million should be provided from MTEAF/MSLN funds for FY 2003. We direct our Maine Telecommunications Education Access Fund administrator to transfer \$2.25 million to the Commissioner of Administrative and Financial Services, acting as fiduciary and fiscal agent for the Maine Learning Technology Endowment, as authorized by P.L. 2001, chapter 358, P.L. 2001 and chapter 559 Part LL and pursuant to our earlier order in this docket dated September 14, 2001.

In approving this transfer, we recognize that P.L. 2001, chapter 559 requires at least \$2 million from the MTEAF fund be available by May 2006 for purposes other than MLTE and digital library databases. Nothing we do today in approving the DOE's request compromises our ability to meet this mandate, because, even after transferring the \$2.25 million today, there is more than \$2 million remaining in the MTEAF fund. We acknowledge that in the future it may be difficult to meet the MLTE commitment as well as the other mandates, unless additional funds are available, such as from federal E-rate. We will deal with these issues as they arise and do our best to honor the legislative directives presented to us by the various statutes relating to the use of MTEAF funds.²

¹ OPA further addresses the issue of innovative and technologically advanced services provided for in 35-A MRSA § 7104-B(5). Since we are not relying on this section in making our determination, we do not address these comments.

² While one statute, enacted after our September 14, 2001 order, mandates that we "ensure" that certain funds not be spent on the learning technology plan, an earlier statute requires that we "ensure" that the plan have adequate capacity for network connections, technical support and toll-free home network access. We will obviously do our best to ensure both of these results, but to the extent that they prove to conflict, we will have to determine which mandate takes priority.

Dated at Augusta, Maine, this 5th day of December, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond

COMMISSIONER ABSENT: Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.